

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No. 05-91-KAJ
)	
LINWOOD LIPSCOMB)	
aka LEN WOODS,)	
Defendant.)	

JURY INSTRUCTIONS

Dated: March 2, 2006

TABLE OF CONTENTS

	<u>Page</u>
GENERAL	1
INTRODUCTION	1
JURORS' DUTIES	2
PRESUMPTION OF INNOCENCE BURDEN OF PROOF REASONABLE DOUBT	3
EVIDENCE DEFINED	5
CONSIDERATION OF EVIDENCE	6
DIRECT AND CIRCUMSTANTIAL EVIDENCE	7
CREDIBILITY OF WITNESSES	8
NATURE OF THE CHARGES	9
INTRODUCTION	9
GENERAL INFORMATION REGARDING BANKRUPTCY LAWS	10
BANKRUPTCY FRAUD: FALSE DECLARATION OR STATEMENT UNDER PENALTY OF PERJURY (COUNTS ONE AND THREE)	11
BANKRUPTCY FRAUD: FALSE OATH (COUNTS TWO AND FOUR)	14
KNOWINGLY AND FRAUDULENTLY	16
SOCIAL SECURITY FRAUD	17
ELEMENTS OF SOCIAL SECURITY FRAUD	18
ON OR ABOUT	19
EACH COUNT TO BE CONSIDERED SEPARATELY	20
CONSIDERATION OF EVIDENCE	21

INTRODUCTION	21
DEFENDANT’S TESTIMONY	22
DELIBERATIONS AND VERDICT	23
UNANIMOUS VERDICT	24
DUTY TO DELIBERATE	25
PUNISHMENT	26
VERDICT FORM	27
COURT HAS NO OPINION	28

GENERAL

INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crime that the defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

JURORS' DUTIES

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if, as to each crime charged, the Government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers may have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

**PRESUMPTION OF INNOCENCE
BURDEN OF PROOF
REASONABLE DOUBT**

As you know, the defendant has pleaded not guilty to the crimes charged in the Indictment. The Indictment is not any evidence at all of guilt. It is just the formal way that the Government tells the defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, a defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the Government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

This means that a defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the Government to prove that he is guilty, and this burden stays on the Government from start to finish. You must find the defendant not guilty unless the Government convinces you beyond a reasonable doubt that he is guilty.

The Government must prove beyond a reasonable doubt every element of the particular crimes charged. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate

to rely and act on it in making the most important decisions in your own lives. If you are convinced that the Government has proved beyond a reasonable doubt that the defendant is guilty of the crimes charged, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; and the stipulations of the parties.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

Because these things are not evidence, you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, nor does it say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

CREDIBILITY OF WITNESSES

You have seen the witnesses and have heard them testify. It is your duty to reconcile all the testimony of all the witnesses, both on direct and on cross-examination, with all of the facts, if you are able to do so. If, after weighing the matter carefully, and viewing it in light of your best judgment as reasonable men and women, you find you are unable to reconcile a conflict in the testimony, then it is for you to say who has been mistaken, who has told the truth, who has testified falsely, and whom you will believe. In other words, it is for you to determine whether the Government has proved beyond a reasonable doubt whether the defendant committed the offenses charged in the Indictment, and, in making that determination, it is for you to decide which testimony is most worthy of belief, and you may disregard any testimony which cannot be reasonably and fairly reconciled with testimony you believe.

NATURE OF THE CHARGES

INTRODUCTION

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crimes that the defendant is accused of committing.

But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the Indictment. Your job is limited to deciding whether the Government has proved the crimes charged.

GENERAL INFORMATION REGARDING BANKRUPTCY LAWS

Counts One through Four of the Indictment charge violations of certain provisions of the bankruptcy fraud statute, Title 18, United States Code, Section 152. Before I instruct you on the elements of these bankruptcy crimes, I will give you some instructions on bankruptcy law in general.

A bankruptcy case is initiated by the filing of a bankruptcy petition. The debtor must sign the bankruptcy petition under penalty of perjury. The person on whose behalf the bankruptcy petition is filed is called the “debtor.” The people, entities, or businesses that are owed money by the debtor or that have a claim against the debtor are called “creditors.”

The filing of a bankruptcy case creates an “estate.” The estate of the debtor includes all rights, title, share, or interest in property owned by the debtor at the time the bankruptcy petition is filed.

The filing of the bankruptcy petition operates to stay any action by creditors on their claims against the debtor or his property, unless permission of the bankruptcy court is first obtained. For instance, a creditor may not commence or continue any judicial or administrative action or proceeding against the debtor, nor may a creditor enforce, against the debtor or the property of his or her estate, a judgment obtained before the petition was filed. A creditor may proceed against the debtor or his or her property only after requesting and obtaining from the bankruptcy court relief from the stay.

**BANKRUPTCY FRAUD: FALSE DECLARATION OR STATEMENT UNDER PENALTY
OF PERJURY (COUNTS ONE AND THREE)**

The Indictment accuses the defendant of four separate bankruptcy fraud crimes, two for each of the bankruptcy petitions filed. First, the defendant is charged with knowingly and fraudulently making a false declaration or statement under penalty of perjury in connection with a bankruptcy (as charged in Counts One and Three). Second, the defendant is charged with knowingly and fraudulently making a false oath in connection with a bankruptcy (as charged in Counts Two and Four). For you to find the defendant guilty of these crimes, you must be convinced that the government has proved each and every one of the essential elements of the offenses beyond a reasonable doubt.

Counts One and Three of the Indictment charge a violation of Title 18, United States Code Section 152(3). Section 152(3) of Title 18 of the United States Code provides that:

Whoever knowingly and fraudulently makes a false declaration, certificate, verification or statement under penalty of perjury . . . [within the meaning of] section 1746 of title 28 [of the United States Code], in or in relation to [any bankruptcy proceeding] . . .

shall be guilty of an offense against the laws of the United States.

In order to meet its burden of proof with regard to Counts One and Three of the Indictment, the government must prove beyond a reasonable doubt each of the following elements:

First, that on or about the dates alleged in the Indictment there existed a proceeding in bankruptcy in the District of Delaware.

Second, that the defendant filed a statement or declaration under penalty of perjury in or in relation to that bankruptcy proceeding.

Third, that the statement related to some material fact.

Fourth, that the statement was false.

Fifth, that the defendant made such statement knowingly and with intent to defraud another, including the trustee, creditors, or the bankruptcy court.

The first element that the government must prove beyond a reasonable doubt is that there existed a proceeding in bankruptcy under Title 11 of the United States Code

The second element that the government must prove beyond a reasonable doubt is that a declaration or statement under penalty of perjury was made. A declaration is a statement or narration of facts. Here, the government must prove beyond a reasonable doubt that the forgery of Rea E. Ashworth's signature indicating that the information contained in the bankruptcy petition was true and correct and that Rea E. Ashworth was requesting relief in accordance with the bankruptcy statutes, was made under penalty of perjury.

The third element that the government must prove beyond a reasonable doubt is that the statement concerned a material fact.

A matter is "material" if it has a natural tendency to influence, or is capable of influencing, the outcome of the bankruptcy proceeding. A material fact is one which relates to the extent and nature of the debtor's assets, or the business or financial transactions of the debtor, or to the discovery of assets, or to statements designed to secure an adjudication of bankruptcy. A material fact refers not only to the main fact which was the subject of the inquiry, but to any fact or circumstance which tends to corroborate or strengthen the proof introduced to establish the main fact.

The fourth element that the government must prove beyond a reasonable doubt is that the statement was false. The term "false statement" means a statement or an assertion which is known to be untrue when made or when used. The term "false" is not limited to affirmative misstatements, but can also mean any knowing omission of fact made with intent to deceive or conceal. In other words,

the government must prove that the defendant falsely stated and forged Rea E. Ashworth's signature indicating that the information in the bankruptcy petition was true and correct and that she was requesting relief under the bankruptcy statutes when, in truth and in fact, as the defendant allegedly knew, Rea E. Ashworth had not signed the petition and she did not have knowledge that it was being filed.

The fifth element that the government must prove beyond a reasonable doubt is that the defendant acted knowingly and with intent to defraud. An act is done knowingly if it is done voluntarily and intentionally, and not because of mistake, accident or other innocent reason. An act is done with intent to defraud if it is done with the intent to deceive anyone, including creditors, the trustee or the bankruptcy judge. I will describe the terms knowingly and fraudulently in more detail below.

BANKRUPTCY FRAUD: FALSE OATH (COUNTS TWO AND FOUR)

Counts Two and Four of the Indictment charge a violation of Title 18, United States Code, Section 152(2). Section 152(2) of Title 18 of the United States Code provides that:

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding . . .

shall be guilty of an offense against the laws of the United States.

In order to meet its burden of proof with regard to Counts Two and Four of the Indictment, the government must prove beyond a reasonable doubt each of the following elements:

First, on or about the dates alleged in the Indictment there existed a proceeding in bankruptcy in the District of Delaware.

Second, that the defendant made a statement under oath in or in relation to that proceeding.

Third, that the statement concerned a material fact.

Fourth, that the statement was false.

Fifth, that the defendant did so knowingly and with intent to defraud another, including the trustee, creditors, or the bankruptcy court.

I have already instructed you as to the first, third, and fifth elements, when I spoke to you about the elements of the crime of making a false declaration in a bankruptcy proceeding, so I will not repeat those instructions.

The second element, however, is slightly different. The second element requires that the government prove beyond a reasonable doubt that a false statement was made under oath. Nevertheless, the end point is virtually the same, since a statement made under oath is one that is made under penalty of perjury. In other words, the government must prove beyond a reasonable doubt that the defendant's certification that he (a) was the "non-attorney petition preparer," (b) that he prepared the petition for

compensation, and (c) that he provided the debtor, Rea E. Ashworth, with a copy of the petition was made under oath.

The fourth element that the government must prove beyond a reasonable doubt is that the statement was false. The term “false” is not limited to affirmative misstatements, but can also mean any knowing omission of fact made with intent to deceive or conceal. In other words, the government must prove that the defendant falsely certified (a) that he was the “non-attorney petition preparer,” (b) that he prepared the petition for compensation, and (c) that he provided the debtor, Rea E. Ashworth, with a copy of the petition, when he then and there knew that he had not prepared the petition for compensation nor had he provided the debtor Rea E. Ashworth with a copy of the petition.

KNOWINGLY AND FRAUDULENTLY

You will note that the false oaths and false statements under penalty of perjury charged in Counts One through Four of the Indictment are alleged to have been made "knowingly and fraudulently."

An act or a failure to act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted because of an act or a failure to act due to mistake or accident or other innocent reason.

An act or a failure to act is "fraudulently" done, if done willfully, and with the intent to deceive.

An act or a failure to act is "willfully" done, if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

SOCIAL SECURITY FRAUD

Count Five of the Indictment charges the defendant with fraudulent use of a Social Security number with the intent to deceive, in violation of Title 42, United States Code, Section 408(a)(7)(B), which provides, in relevant part, as follows:

Whoever . . . for any [] purpose - with intent to deceive, falsely represents a number to be the social security account number assigned . . . to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person . . . shall be guilty of a crime.

ELEMENTS OF SOCIAL SECURITY FRAUD

In order to meet its burden of proof with regard to Count Five of the Indictment, the government must prove beyond a reasonable doubt each of the following elements:

First, the defendant knowingly represented Social Security account number xxx-xx-4271, as described in the Indictment, to be the Social Security account number that had been assigned to him by the Secretary of the United States Department of Health and Human Services, Commissioner of Social Security.

Second, this representation was false, because account number xxx-xx-4271, as described in the Indictment, was not the Social Security account number assigned to the defendant at that time.

Third, the defendant made that representation with the intent to deceive.

Fourth, the defendant did so for the purpose of pursuing a bankruptcy case in the District of Delaware.

ON OR ABOUT

Next, I want to say a word about the dates mentioned in the Indictment.

The Indictment charges that the crimes happened "on or about" a particular date. The Government does not have to prove that the crime happened on that exact date. But the Government must prove that the crime happened reasonably close to that date.

EACH COUNT TO BE CONSIDERED SEPARATELY

A separate crime is charged in each count of the Indictment. Each count and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the crimes charged against him should not control your verdict as to any other count.

CONSIDERATION OF EVIDENCE

INTRODUCTION

That concludes the part of my instructions explaining the elements of the crimes charged. Next I will explain some rules that you must use in considering some of the testimony and evidence.

DEFENDANT'S TESTIMONY

You have heard the defendant testify. The defendant's credibility should be judged in the same way as any other witness.

DELIBERATIONS AND VERDICT

Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

UNANIMOUS VERDICT

Your verdict, whether it is guilty or not guilty, must be unanimous.

To find a defendant guilty, every one of you must agree that the Government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt as to that Count.

To find him not guilty, every one of you must agree that the Government has failed to convince you beyond a reasonable doubt as to that Count.

Either way, guilty or not guilty, your verdict must be unanimous.

After you have reached unanimous agreement as to the guilt or innocence of the defendant with respect to each of the Counts in the Indictment, you then return to the courtroom. Your foreperson, who by custom of this Court is the No. 1 juror, _____, in answer to a question asked by the Clerk, will give your verdict of either "Not Guilty" or "Guilty" with respect to the Indictment.

DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the Government has proved the defendant guilty beyond a reasonable doubt with respect to each Count.

PUNISHMENT

If you decide that the Government has proved the defendant guilty, then it will be my job to decide what the appropriate punishment should be.

Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict.

Your job is to look at the evidence and decide if the Government has proved the defendant guilty beyond a reasonable doubt.

VERDICT FORM

I have prepared a verdict form that you should use to record your verdict. The form will be given to the foreperson.

If you decided that the Government has proved a particular charge against the defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the Government has not proved a charge against him beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Each of you should then sign the form, put the date on it, and return it to me.

COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the Government has proved the defendant guilty beyond a reasonable doubt.